

IN THE SENATE

SENATE BILL NO. 1382, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO DE FACTO CUSTODIANS; AMENDING TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 17, TITLE 32, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A PURPOSE, TO PROVIDE FOR DE FACTO CUSTODIANS, TO PROVIDE FOR PETITIONS FOR CUSTODY AND MOTIONS TO INTERVENE BY PERSONS SEEKING DETERMINATIONS THAT THEY ARE DE FACTO CUSTODIANS, TO PROVIDE FOR NOTICE, TO REQUIRE STIPULATED FACTS OR FINDINGS OF FACT THAT A PERSON IS A DE FACTO CUSTODIAN, TO PROVIDE CERTAIN EVIDENTIARY STANDARDS, TO PROVIDE FOR THE APPLICATION OF SPECIFIED STANDARDS AND CONSIDERATIONS RELATING TO A DETERMINATION OF THE BEST INTERESTS OF THE CHILD, TO PROVIDE FOR DE FACTO CUSTODIAN ORDERS, TO PROVIDE FOR ACCESS TO CERTAIN RECORDS AND TO PROVIDE FOR TERMINATION OF CUSTODY ORDERS; AMENDING SECTION 15-5-207, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE APPOINTMENT OF GUARDIANS OF MINORS, TO PROVIDE THAT DE FACTO CUSTODIANS MAY INITIATE PROCEEDINGS FOR THE APPOINTMENT OF A GUARDIAN, TO REVISE PROVISIONS RELATING TO NOTICE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 15-5-213, IDAHO CODE, TO REVISE A DEFINITION OF "DE FACTO CUSTODIAN" AND TO REVISE PROVISIONS RELATING TO THE RECOGNITION OF DE FACTO CUSTODIANS RELATING TO STANDING IN CERTAIN PROCEEDINGS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 17, Title 32, Idaho Code, and to read as follows:

CHAPTER 17
DE FACTO CUSTODIAN ACT

32-1701. SHORT TITLE. This chapter may be known and cited as the "De Facto Custodian Act."

32-1702. PURPOSE. The purpose of this act is to:

(1) Give constitutionally required deference to the decisions of fit parents in custody actions brought by third parties;

(2) Subject to such constitutionally required deference, meet the needs of children for caring and stable homes by providing a flexible method by which a third party who has cared for and supported a child may obtain legal and physical custody of the child where such custody is in the child's best interests.

32-1703. DE FACTO CUSTODIANS. (1) "De facto custodian" means an individual who:

(a) Is related to a child within the third degree of consanguinity; and

(b) Either individually or together with a copetitioner has been the primary caretaker and primary financial supporter of such child has resided with the individual without a parent present and with a lack of demonstrated consistent participation by a parent for a period of:

(i) Six (6) months or more if the child is under three (3) years of age; or

(ii) One (1) year or more if the child is three (3) years of age or older.

(c) For purposes of the definition in this section, "lack of demonstrated consistent participation" by a parent means refusal or failure to comply with the duties imposed upon the parent by the parent-child relationship. When determining a "lack of demonstrated consistent participation," the court may consider parent involvement in providing the child necessary food, clothing, shelter, health care and education and in creating a nurturing and consistent relationship for the child's physical, mental or emotional health and development.

(2) In determining if a petitioner or intervenor is a de facto custodian for the child, the court shall also take into consideration whether the child is currently residing with the petitioner or intervenor and, if not, the length of time since the child resided with the petitioner or intervenor.

(3) Any period of time after the filing of a petition pursuant to this chapter shall not be included in determining whether the child has resided with the individual for the time period as provided in subsection (1) of this section.

(4) An individual shall not be deemed a de facto custodian if a child has resided with the individual because:

(a) The child was placed in the individual's care through a court order or voluntary placement agreement under title 16, Idaho Code; or

(b) The individual is or was cohabiting with, or is or was married to, a parent of the child.

32-1704. COMMENCEMENT OF PROCEEDINGS. (1) A child custody proceeding may be initiated in any court of this state with jurisdiction to determine child custody matters, by an individual:

(a) Filing a petition seeking a determination that he or she is a de facto custodian pursuant to section 32-1703, Idaho Code, and seeking custody of a child; or

(b) Filing a motion seeking permissive intervention pursuant to rule 24 of the Idaho rules of civil procedure, in a pending custody proceeding seeking a determination that he or she is a de facto custodian pursuant to section 32-1703, Idaho Code, and seeking custody of a child.

(2) A petition for custody or a motion to intervene based on the petitioners or intervenors alleged status as a de facto custodian, filed under this section, must state and allege:

(a) The name and address of the petitioner or intervenor and any prior or other name used by the petitioner or intervenor;

(b) The name of the respondent mother and father or guardian(s) and any prior or other name used by the respondent(s) and known to the petitioner or intervenor;

(c) The name and date of birth of each child for whom custody is sought;

1 (d) The relationship of the petitioner or intervenor to each child for
2 whom custody is sought;

3 (e) The basis for jurisdiction asserted by the petitioner or
4 intervenor;

5 (f) The current legal and physical custodial status of each child
6 for whom custody is sought, whether a proceeding involving custody of
7 the child, including a proceeding for an order or protection pursuant
8 to section 39-6304, Idaho Code, is pending in a court in this state
9 or elsewhere, and a list of all prior orders of custody, including
10 temporary orders, if known to the petitioner or intervenor;

11 (g) Whether either parent is a member of the armed services, if known to
12 the petitioner or intervenor;

13 (h) The length of time each child has resided with the petitioner or
14 intervenor and the nature of the petitioners or intervenors role in
15 caring for each child for whom custody is sought;

16 (i) The financial support provided by the petitioner or intervenor for
17 each child for whom custody is sought;

18 (j) Whether physical and/or legal custody should be granted to and/or
19 shared with the respondent(s); and

20 (k) The basis upon which the petitioner or intervenor is claiming
21 that it is in the best interests of the child that the petitioner or
22 intervenor have custody of the child.

23 (3) The petition or motion must be verified by the petitioner or
24 intervenor.

25 (4) Written notice of a hearing on a petition or motion to intervene for
26 custody of a child by a de facto custodian must be given to:

27 (a) The parent(s) of the child as defined in section 16-2002(11) and
28 (12), Idaho Code; and

29 (b) The guardian or legal custodian, if any, of the child; and

30 (c) The child's tribe pursuant to federal law, if the child is an Indian
31 child as defined in the Indian child welfare act, 25 U.S.C. 1901, et seq.

32 (5) Written notice of a hearing on a petition for custody of a child
33 by a de facto custodian must be given to the Idaho department of health and
34 welfare if the petitioner has reason to believe that either parent receives
35 public assistance, the petitioner receives public assistance on behalf
36 of the child or either parent receives child support enforcement services
37 from the Idaho department of health and welfare or applies for such public
38 assistance or child support enforcement services after a petition under this
39 section is filed. Notice to the Idaho department of health and welfare must
40 include a copy of the petition.

41 (6) In an action for custody of a child by a de facto custodian, the
42 parties must stipulate to, or the court must find, facts establishing by
43 clear and convincing evidence that the petitioner or intervenor is a de
44 facto custodian pursuant to the requirements of section 32-1703, Idaho Code,
45 before the court considers whether custody with the de facto custodian is in
46 the best interests of the child.

47 (7) Once a court has found facts supporting the qualification of the
48 petitioner or intervenor as the de facto custodian of a child, the petitioner
49 or intervenor must prove by a preponderance of the evidence that it is in the
50 best interests of the child to be in the custody of the de facto custodian.

1 In determining the best interests of the child, the court shall apply the
2 standards as provided in section 32-717(1), Idaho Code.

3 (8) In determining whether the petitioner or intervenor has
4 established that it is in the best interests of the child to be in the custody
5 of the de facto custodian, the court may also consider:

6 (a) The circumstances under which the child was allowed to remain in the
7 care of the de facto custodian, including whether the child was placed
8 with the de facto custodian to allow the parent to seek work or to attend
9 school;

10 (b) Whether the child is currently residing with the de facto custodian
11 and, if not, the length of time since the petitioner or intervenor last
12 functioned as the child's de facto custodian.

13 32-1705. NATURE OF DE FACTO CUSTODIAN ORDER -- ACCESS TO RECORDS
14 -- TERMINATION OF DE FACTO CUSTODIANSHIP. (1) A court may enter an order
15 granting a de facto custodian sole or joint legal and/or physical custody as
16 defined in section 32-717B(1), (2) and (3), Idaho Code, in the same manner as
17 it would grant such custody to a parent.

18 (2) An order granting custody to a de facto custodian is subject to the
19 continuing jurisdiction of the court and is modifiable in the same manner
20 as an order establishing parental custody pursuant to section 32-717, Idaho
21 Code, or a similar provision.

22 (3) A de facto custodian who has been granted sole or joint legal
23 custody of a child shall have access to records pertaining to the child who is
24 the subject of the de facto custodianship to the same extent as a parent would
25 have such access pursuant to an order of legal custody.

26 (4) Any party to the proceeding granting custody to a de facto custodian
27 may move for the termination of the custody order. A de facto custodian may
28 move for permission to resign as de facto custodian.

29 (a) A party moving for termination of the de facto custodian-child
30 relationship must show by a preponderance of the evidence that
31 termination of the relationship would be in the best interests of the
32 child.

33 (b) A motion for termination or for resignation may, but need not,
34 include a proposal for the continuing custody of the child.

35 (c) After notice and hearing on a motion for termination or
36 resignation, the court may terminate the custody of the de facto
37 custodian and may make any further orders that may be appropriate in the
38 best interests of the child.

39 SECTION 2. That Section 15-5-207, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR -- PROCEDURE. (1)
42 Proceedings for the appointment of a guardian may be initiated by the
43 following persons:

44 (a) Any relative of the minor;

45 (b) The minor if he is fourteen (14) or more years of age, a de facto
46 custodian of the minor;

47 (c) Any person who comes within section 15-5-213(1), Idaho Code; or

48 (d) Any person interested in the welfare of the minor.

1 (2) Notice of the time and place of hearing of a petition for the
 2 appointment of a guardian of a minor is to be given by the petitioner in the
 3 manner prescribed by section 15-1-401, ~~of this code~~ Idaho Code, to:

4 (a) The minor, if he is fourteen (14) or more years of age;

5 (b) The person who has had the principal care and custody of the minor
 6 during the sixty (60) days preceding the date of the petition;

7 (c) ~~The de facto custodian of the minor, if any~~ Any person who comes
 8 within section 15-5-213(1), Idaho Code; and

9 (d) Any living parent of the minor; provided however, that the court may
 10 waive notice to a living parent of the minor who is, or is alleged to be,
 11 the father of the minor if:

12 (i) The father was never married to the mother of the minor
 13 and has failed to register his paternity as provided in section
 14 16-1504(4), Idaho Code; or

15 (ii) The court has been shown to its satisfaction circumstances
 16 that would allow the entry of an order of termination of parental
 17 rights pursuant to section 16-2005, Idaho Code, even though
 18 termination of parental rights is not being sought as to such
 19 father.

20 (3) Upon hearing, if the court finds that a qualified person seeks
 21 appointment, venue is proper, the required notices have been given, the
 22 requirements of section 15-5-204, ~~of this part~~ Idaho Code, have been met, and
 23 the welfare and best interests of the minor will be served by the requested
 24 appointment, it shall make the appointment. In other cases the court may
 25 dismiss the proceedings, or make any other disposition of the matter that
 26 will best serve the interest of the minor.

27 (4) If necessary, the court may appoint a temporary guardian, with the
 28 status of an ordinary guardian of a minor, but the authority of a temporary
 29 guardian shall not last longer than six (6) months.

30 (5) The court shall appoint an attorney to represent the minor if the
 31 court determines that the minor possesses sufficient maturity to direct the
 32 attorney. If the court finds that the minor is not mature enough to direct
 33 an attorney, the court shall appoint a guardian ad litem for the minor. The
 34 court may decline to appoint an attorney or guardian ad litem if it finds in
 35 writing that such appointment is not necessary to serve the best interests of
 36 the minor or if the Idaho department of health and welfare has legal custody
 37 of the child.

38 (6) Letters of guardianship must indicate whether the guardian was
 39 appointed by will or by court order.

40 SECTION 3. That Section 15-5-213, Idaho Code, be, and the same is hereby
 41 amended to read as follows:

42 15-5-213. DE FACTO CUSTODIAN. (1) "De facto custodian" means a person
 43 who has either been appointed the de facto custodian pursuant to section
 44 32-1705, Idaho Code, or if not so appointed, has been the primary caregiver
 45 for, and primary financial supporter of, a child who, prior to the filing
 46 of a petition for guardianship, has resided with the person for a period of
 47 six (6) months or more if the child is under three (3) years of age and for a
 48 period of one (1) year or more if the child is three (3) years of age or older.

1 (2) If a court determines by clear and convincing evidence that a person
2 meets the definition of a de facto custodian, and that recognition of the de
3 facto custodian is in the best interests of the child, the court shall give
4 the person the same standing that is given to each parent in proceedings for
5 appointment of a guardian of a minor. In determining whether recognition
6 of a de facto custodian is in the child's best interests, the court shall
7 consider:

8 (a) Whether the child is currently residing with the person seeking
9 ~~recognition as a de facto custodian~~ such standing; and

10 (b) If the child is not currently residing with the person seeking
11 ~~de facto custodian status~~ such standing, the length of time since the
12 person served as the child's primary caregiver and primary financial
13 supporter.